IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 190 OF 2004

IN

SUMMARY SUIT NO. 413 OF 2004

Subhash S. Chandnani .. Plaintiff

versus

M/s.Amratlal & Dhirajlal & Co. & ors.. Defendants

...

Mr.M.G. Gawde for the plaintiff.

Mr.R.N. Jawat for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 21st February 2005.

P.C.:

1. Heard the learned counsel for the parties.

2. The plaintiff has filed this suit for recovery of the sum of Rs.1,42,000/- allegedly advanced to the defendant for which the defendant is alleged to have executed a writing dated 2nd February 2001. Copy of

the writing is annexed to the plaint as Exhibit-A.

3. By filing an affidavit in reply, the defendant has denied having received the money. He has also denied having executed any writing. He has denied signature on the alleged writing. If the facts alleged by the defendant are proved by him at trial i.e. it is proved that the signature is not his, then obviously, the defendant would have a good defence. As the signature is denied, the plaintiff would be required to prove at trial that he had advanced the money to the defendant and that the defendant had executed the writing Exhibit-A to the plaint. The defence not being sham and illusory, the defendant is entitled to an unconditional leave to defend the suit. Hence, I pass the following order:

4. The defendant is granted unconditional leave to defend the suit. Suit shall stand transferred to the list of commercial causes. The defendant to file written statement within a period of four weeks.

D.G. KARNIK, J